

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BETTY MOON,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

NO. CV-06-0328-EFS

**ORDER DENYING
PLAINTIFF'S MOTION FOR
RECONSIDERATION**

Before the Court, without oral argument, is Plaintiff Betty Moon's Motion for Reconsideration. (Ct. Rec. 59.) After reviewing the submitted material and relevant authority, the Court is fully informed and denies Plaintiff's motion.

I. Discussion

A. Standard

A motion for reconsideration is "appropriate if the district court (1) is presented with newly-discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *Sch. Dist. No. 1J v. AC&S, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). "[A] motion for reconsideration should not be granted, absent highly unusual circumstances." *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999). A motion for

1 reconsideration may not be used to raise arguments or present evidence
2 for the first time when they could reasonably have been raised earlier
3 in the litigation. *Id.*; *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d
4 877, 890 (9th Cir. 2000).

5 **B. Reconsideration of Discretionary Function Exception Application**

6 Plaintiff, citing two (2) cases, asserts that the Court committed
7 manifest error when it determined that her claims were barred by the
8 discretionary function exception to the Federal Tort Claims Act (FTCA).
9 (Ct. Rec. 57.) Each case is considered in turn.

10 Plaintiff first cites *Terbush v. United States*, 516 F.3d 1125, 1133
11 (9th Cir. 2008). Aside from a pinpoint citation, Plaintiff provides no
12 analysis of why or how *Terbush* demonstrates that the Court committed
13 manifest error. Without guidance, the Court infers that Plaintiff cites
14 *Terbush* for the proposition that matters of routine maintenance are not
15 protected by the discretionary function exception because they generally
16 do not involve policy-weighting decisions or actions. The Court
17 previously rejected this argument in the Order granting summary judgment,
18 finding that Glacier National Park's ("Glacier") hazardous tree
19 management decisions involve balancing multiple policy considerations
20 under the Hazard Tree Management Plan (HTMP) and the Organic Act,
21 including (1) public safety, (2) cost, (3) public access, and (4)
22 ecological conservation. (Ct. Rec. 57 at 10, 11.) Plaintiff's
23 citation, without more, fails to demonstrate that the Court committed
24 manifest error.

25 Plaintiff next cites *Middaugh v. United States*, 293 F. Supp.
26 977(D.C. Wyo. 1968). Once again, aside from a pinpoint citation,

1 Plaintiff provides no analysis of why or how *Middaugh* demonstrates that
2 the Court committed manifest error. Without guidance, the Court infers
3 that Plaintiff cites *Middaugh* to support her claim that the Court
4 inappropriately failed to make inferences in her favor relating to the
5 subject tree's hazardous condition.

6 Plaintiff's argument fails because the Court is required to
7 determine jurisdiction - through a discretionary function inquiry -
8 before examining issues of negligence and the inferences drawn therefrom.
9 See *In re Glacier Bay*, 71 F.3d 1447, 1451 (9th Cir.1995) (noting that
10 issues of negligence are irrelevant to the discretionary function
11 inquiry). *Middaugh*, therefore, does nothing to demonstrate manifest error
12 because it does not discuss, let alone mention, the discretionary
13 function exception. The Court correctly performed the discretionary
14 function inquiry and properly determined that Plaintiff's FTCA claims
15 were jurisdictionally barred. Plaintiff's previously-argued negligence
16 claims and naked reliance on *Terbush* and *Middaugh* fail to establish
17 manifest error in the Court's previous Order.

18 Accordingly, **IT IS HEREBY ORDERED:** Plaintiff's Motion for
19 Reconsideration (**Ct. Rec. 59**) is **DENIED**.

20 **IT IS SO ORDERED.** The District Court Executive is directed to enter
21 this Order and distribute copies to counsel.

22 **DATED** this 22nd day of August 2008.

23
24 S/ Edward F. Shea
25 EDWARD F. SHEA
26 United States District Judge